



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/801,887 | 03/16/2004 | Ray Showers | 1010-0119 | 4482 |

26568 7590 10/11/2006

COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD
SUITE 2850
200 WEST ADAMS STREET
CHICAGO, IL 60606

| |
|----------|
| EXAMINER |
|----------|

HORTON, YVONNE MICHELE

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3635

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,887

Applicant(s)

SHOWERS ET AL.

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,172,343 to JACOBS in view of US Patent #5,009,045 to YODER. JACOBS discloses a deck board (10) including a top surface having a water drainage channel (32) and a feed channel (18,26) at an angle thereto and intersecting; wherein the drainage channel (32) has a depth at least as great as that of the feed channel (18,26). JACOBS discloses the basic claimed board except for forming the board from a resin material. YODER teaches that it is known in the art to form a deck board from a plastic resin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the board of JACOBS out of the plastic resin of YODER in order to prevent the board from corroding from extensive exposure to external weather

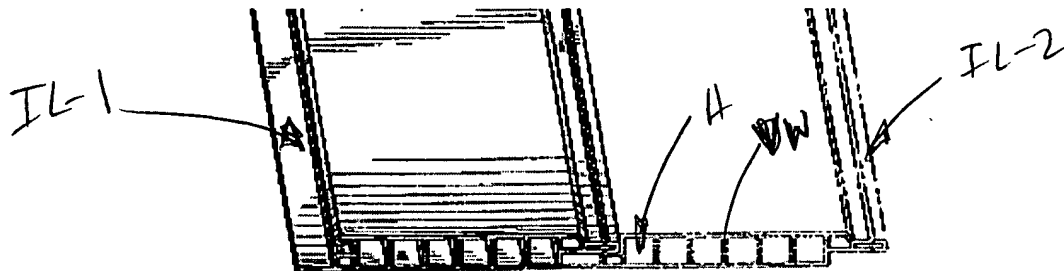
Art Unit: 3635

conditions. Regarding claim 2, the drainage channel (32) penetrates the top surface deeper than the feed channel (18,26). In reference to claim 3, the feed channel (18,26) is u-shaped with a flat base (24).

Claims 4-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Design Patent #Des366,943 to SHEEHY in view of US Patent #3,172,343 to JACOBS. SHEEHY discloses a planar top surface resin deck panel. SHEEHY discloses the basic claimed panel except for explicitly detailing the use of channels of the top surface thereof. Although SHEEHY is silent in this regard, it is old and very well known in the art to provide decking members with channels on a top surface thereof. However, JACOBS teaches that it is known in the art to provide a deck member with water drainage channel (32) and a feed channel (18,26) at an angle thereto and intersecting; wherein the drainage channel (32) has a depth at least as great as that of the feed channel (18,26). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top surface of SHEEHY with the feed and drainage channels of JACOBS in order to properly ensure that surface accumulation is disposed thereof. Removing water or any excess surface accumulation improves foot traction and reduces the risk of a user slipping and falling thereon. Regarding claim 5, the drainage channel (32) penetrates the top surface deeper than the feed channel (18,26). In reference to claims 6 and 7, the feed channels (18,26) extend from side to side and intersect with all of the drainage channels (32). Regarding claim 13, the deck of SHEEHY is an extrusion with interior hollows (H) divided by

Art Unit: 3635

interior vertical walls (VW). The location of the channels with respect to the vertical walls is an obvious matter of design choice.



Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Design Patent #Des366,943 to SHEEHY in view of US Patent #3,172,343 to JACOBS, as applied to claim 4 above, and further in view of US Patent #5,009,045 to YODER. SHEEHY, as modified by JACOBS, discloses the basic claimed panel except for there being a first and a second set of intersecting channels. YODER teaches that it is known in the art to provide a panel top with first and second intersecting channels. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top surface of SHEEHY, as modified by JACOBS, with the intersecting channels of YODER in order to properly ensure that surface accumulation is disposed thereof. Removing water or any excess surface accumulation improves foot traction and reduces the risk of a user slipping and falling thereon. Regarding claim 9, the first and second channels for a diamond pattern. In reference to claim 10, the deck of SHEEHY details the use of a first interlocking component (IL-1) on a first edge and a second interlocking component (IL-2) on a second edge.

Allowable Subject Matter


Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yvonne M. Horton
Examiner
Art Unit 3635

09/30/06